HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.26663 and

Writ Petition No. 27553 of 2005.

Between:

M/s Siddhi Vinayaka Hotels (P) Ltd.,

D.No. 11-9-5, Kothapet X roads,

Saroornagar, RR District rep. By its

Managing Director and two others … Petitioners

And

The Union of India rep. By its Ministry of Law,

Shastry Bhavan, Rastrapathi Road, New Delhi… Respondents

Counsel for the Petitioner: Sri T.V.L. Narasimha Rao

Counsel for Respondents No.1: Sri Mohan Parasaran,

Additional Solicitor General

Assisted by Sri A.Rajasekhar

Reddy, Asst.Solicitor General.

Counsel for Respondent No.2: Sri Vasudeva Rao

W.P.No. 27553 of 2005

M/s Rakrina Raw & Boiled Rice Mill, Navalakula Gardens,

Mypaud Road, Nellore rep. By its Managing

Partner and four others ..Petitioners

And

The Union of India rep. By its Ministry of Law,

Shastry Bhavan, Rastrapathi Road, New Delhi

And another ..Respondents

Counsel for the petitioners: Sri T.V.L Narasimha Rao.

Counsel for Respondent No.1: Sri Mohan Parasaran

Additional Solicitor General

Assisted by Sri A. Rajasekhar Reddy,

Asst. Solicitor General.

Counsel for Respondent Nos. 2 and 3: Sri E.Madan Mohan Rao

Counsel for Respondent Nos.4 and 5: Govt. Pleader for

Revenue

February 17, 2006

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JUDGMENT

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Per G.S. Singhvi, CJ

In these petitions, the petitioners have challenged the constitutionality of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitisation Act') and orders passed by Chief Metropolitan Magistrate, Ciberabad and Collector and District Magistrate, Nellore respectively for appointment of Advocate-Commissioner and the Mandal Revenue Officer to take possession of the properties of the petitioners.

Before adverting to the grounds of which the petitioners have questioned the validity of Section 14 of the Securitisation Act, we may briefly notice the factual matrix of both the cases.

W.P.No.26663 of 2005:

Petitioner No.1 is engaged in the hotel business. It took term loan of Rs.54 lakhs and cash credit of Rs.10 lakhs from Central Bank of India (respondent No.2). On account of failure of petitioner No.1 to repay the loan, respondent No.2 initiated proceedings under the Securitisation Act. Notice under Sec. 13 (2) was issued on August 6, 2002 requiring the petitioners to pay Rs. 69,68,933-67 Ps. within a period

of sixty days. This was followed by notice dated September 22, 2003 issued under Section 13 (4) of the Securitisation Act read with Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules'). After one year, respondent No.2 filed an application under Sec. 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the RDB Act') before Debts Recovery Tribunal, Hyderabad for recovery of Rs.83,94.317-24 Ps. The petitioners are said to have made an offer to respondent No.2 on September 3, 2005 to settle the account by paying Rs.73 lakhs. But the latter did not favourably respond to the same. Thereupon, the petitioners filed writ petition No. 20298 of 2005 questioning the legality of notice issued under Section 13 (4) of the Securitisation Act. The same was dismissed by the Division Bench on February 7, 2005. After five days, the petitioners instituted the present petition by alleging that the Advocate-Commissioner appointed by the Chief Metropolitan Magistrate, Cyberabad through an exparte order dated July 28, 2005 passed in Crl.M.P.No.125 of 2005 visited their premises to take possession. According to the petitioners, Chief Metropolitan Magistrate, Cyberabad passed order for appointment of the Advocate-Commissioner on an application made by respondent No.2 under Section 14 of the Securitisation Act. They have pleaded that Section 14 of the Securitisation Act is liable to be struck down, being an arbitrary piece of legislation because it deprives the aggrieved person of the right of appeal available under Section 17 (1) of the Act. They have also challenged order dated July 28, 2005 passed by Chief Metropolitan Magistrate, Cyberabad by asserting that the same is violative of rules of natural justice. Another plea taken by the petitioners is that respondent No.2 cannot simultaneously continue two proceedings for recovery of its dues, first by filing an application under Section 19 of the RDB Act and then by taking coercive measures under Sections 13 (2) and (4) and 14 of the Securitisation Act.

W.P.No. 27553 of 2005

Petitioner No.1 is a Registered partnership firm. It is engaged in the activity of milling raw and boiled rice. Petitioner No.2 Sri S.Sudheer Reddy is the Managing partner of petitioner No.1. The remaining petitioners are other family members of Sri Sudheer Reddy and are co-partners. Petitioner No.1 availed credit facility of Rs. 6 lakhs from Tamil Nadu Mercantile Bank Limited. Subsequently, the credit facility was enhanced to Rs. 25 lakhs. On March 24, 2005 respondent No.2 - State Bank of India took over the credit facility standing in the name of first petitioner from Tamil Nadu Merchantile

Bank Limited. In September 2001, petitioner No.1 is said to have dismantled its unit for the purpose of up-gradation. This is said to have been done on an assurance given by respondent No.2 to sanction enhanced credit limit to the tune of Rs.110 lakhs. According to the petitioners, respondent No.2 delayed the enhancement of credit limit jeopardizing their business interest. After two years, the petitioners executed fresh set of documents. In the year 2005, petitioner No.1 filed suit for injunction against respondent No.2 with the prayer that the latter may be restrained from taking coercive action for recovery of the outstanding dues. Initially, learned Senior Civil Judge, Nellore passed an exparte order of injunction, but later on vacated the same. The appeal filed by petitioner No.1 against that order is pending before the Ist Additional District Judge, Nellore.

In the meanwhile respondent No.2 issued notice dated August 6, 2005 under Section 13 (2) of the Securitisation Act requiring the petitioners to pay an amount of Rs.1,65,20,309/-. Petitioner No.1 sent reply dated October 4, 2005 and raised objections under Sec. 13 (3A) of the Securitisation Act. Thereafter, they approached respondent No.2 for one time settlement, but their request was turned down and a petition was filed before the Collector and District Magistrate, Nellore under Section 14 of the Securitisation Act. The latter passed order dated December 10, 2005 and appointed Mandal Revenue Officer, Nellore to take possession of the properties of the petitioners.

The petitioners have challenged the validity of Section 14 and order dated December 10, 2005 passed by the Collector and District Magistrate, Nellore on grounds similar to those set out in writ petition No. 26663 of 2005.

Sri T.V.L. Narsimha Rao, learned counsel for petitioners referred to the provisions contained in Chapter III of the Securitisation Act and argued that Section 14 which empowers the Chief Metropolitan Magistrate or the District Magistrate to take possession of secured assets and documents relating thereto is liable to be struck down on the ground that the same is violative of Article 14 of the Constitution. Learned counsel submitted that absence of provision for issuing notice to the person whose secured assets and documents are sought to be taken over and the bar contained in sub-section (3) of Section 14, have the effect of rendering the provision arbitrary. Learned counsel pointed out that the notice issued under Section 13 (2) can be contested by filing representation or raising objections under Section 13 (3A) and action taken under Section 13 (4) can be appealed against under Section 17 but

no remedy is available to the aggrieved person against an action taken under Section 14. He then argued that total exclusion of remedies against an arbitrary action taken under Section 14 should be treated as sufficient for declaring the impugned

provision violative of Article 14 of the Constitution. Sri Narsimha Rao further argued that Section 14 is liable to be struck down as a piece of unfair and unconscionable legislation because it empowers the Chief Metropolitan Magistrate or the District Magistrate to pass an order for taking possession without giving notice and opportunity of hearing to the affected person. He also emphasized that orders passed by Chief Metropolitan Magistrate or District Magistrate for taking over possession of the secured assets and documents of the petitioners has serious adverse effect on the right of property which is protected by Article 300-A of the Constitution and as there is no provision for giving notice or opportunity of hearing to the affected person, the impugned provision is liable to be declared unconstitutional.

Sri Mohan Parasaran, Additional Solicitor General argued that absence of a provision for appeal against the action taken under Section 14(1) of the Securitisation Act and the bar contained in sub-section (3) thereof does not have the effect of rendering the provisions unconstitutional. He further argued that the Court may not strike down the same because the petitioners have neither challenged the legislative power of the Union nor they have been able to show that the impugned section violates any of the provisions of the Constitution. He pointed out that the power to take possession of the secured assets etc., is to be exercised by the secured creditor under sub-section (4) of Section 13 and not under Section 14 which is merely a procedural provision. Sri Parasaran then argued that the remedy available to the aggrieved person under Section 17 (1) of the Securitisation Act against taking over of the possession of the secured assets or documents relating to such assets is not, in any manner, adversely affected by action taken under Section 14 and, therefore, the provision contained in that section cannot be declared as arbitrary and violative of Article 14 of the Constitution. He relied on the Judgment of the Supreme Court in **Mardia Chemicals Ltd v. Union of India** and submitted that Section 14 should not be declared unconstitutional merely because sub-section (3) thereof bars the jurisdiction of all other courts.

We have thoughtfully considered the respective arguments that Section 13 (1) to (4), 14, 17 (1) to (4) of the Securitisation Act and Rule 3 and 4 of the Rules which have bearing on the adjudication of these petitions read as under.

Provisions of the Securitisation Act.

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"13. **Enforcement of security interest**

(1) Notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor any be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require, the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4)

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal

under Section 17 or the Court of District Judge under Section 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely—

a. take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

b. take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt;

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

c. appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

d. require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession of control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and;

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub- section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

17 Right to appeal

1. Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.

(Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.)

(**Explanation**:- For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.)

2. The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made there under.

3. If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in

accordance with the provisions of this Act and the rules made there under, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one of or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

4. If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made there under, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

Securitisation Rules:

3. **Demand notice**:- (1) The service of demand notice as referred to in sub-section (2) of Section 13 of the Ordinance shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

Provided that where authorized officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1)

(3) Any other notice in writing to be served on the borrower or his agent by authorized officer, shall be served in the same manner as provided in this rule.

4. Where there are more than one borrower the demand notice shall be served on each borrower.

4. Procedure after issue of notice:- If the amount mentioned in the demand notice is not paid within the time specified therein, the authorized officer shall proceed to realize the amount by adopting any one or more of the measures specified in sub-section (4) of Section 13 of the Ordinance for taking possession of movable property, namely:-

1. Where the possession of the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorized officer shall take possession of such movable property in the presence of two witnesses after a Panchanama drawn and signed by the witnesses as nearly as possible in Appendix I to these rules.

2. After taking possession under sub-rule (1) above, the authorized officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix II to these rules and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive on behalf of borrower.

3. The authorized officer shall keep the property taken possession under sub-rule (1) either in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as owner of ordinary prudence would, under the similar circumstances, take of such property:

Provided that if such property is subject to speedy or natural decay, or the expense of keeping such property in custody is likely to exceed its value, the authorized officer may sell it at once.

4. The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

5. In case any secured asset is:-

a. a debt not secured by negotiable instrument; or

b. a share in a body corporate;

c. other movable property not in the possession of the borrower except the property deposited in or in the custody of any Court or any like authority, the authorized officer shall obtain possession or recover the debt by service of notice as under:-

a. in the case of a debt, prohibiting the borrower from recovering the debt or any interest thereon and the debtor from making payment thereof and directing the debtor to make such payment to the authorized officer; or

b. in the case of the shares in a body corporate, directing the borrower to transfer the same to the secured creditor and also the body corporate from not transferring such shares in favour of any person other than the secured creditor. A copy of the notice so sent may be endorsed to the concerned body corporate's Registrar to the issue or share transfer agents, if any;

c. in the case of other movable property (except as aforesaid), calling upon the borrowers and the person in possession to hand over the same to the authorized officer and the authorized officer shall take custody of such movable property in the same manner as provided in sub-rules (1) to (3) above;

d. movable secured assets other than those covered in this rule shall be taken possession of by the authorized officer by taking possession of the documents evidencing title to such secured assets.

An analysis of the above reproduced provisions show that by virtue of non-abstante clause contained in sub-section (1) of section 13 any security interest created in favour of any secured creditor may be enforced without the intervention of the court or tribunal. In terms of sub-section (2) the secured creditor can issue notice to the borrower requiring the latter to discharge his liabilities within sixty days from the date of notice. Such notice is required to be delivered in accordance with Rule 3 of the Rules. On receipt of notice issued under sub-section (2), the borrower can make a representation or raise objection against the demand. The secured creditor is required to consider such representation or objection. If it is found that the representation or objection is not acceptable or tenable, then the secured creditor is

duty bound to communicate the reasons for non-acceptance to the borrower. If the borrower fails to discharge his liability in full within a period of sixty days specified in sub-section (2), the secured creditor can take recourse to one or the other mode as specified in sub-section (4). One of the modes is to take over the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset. The secured creditor can also appoint any person to manage the secured assets of which possession has been taken over. Any person who may have acquired any of the secured assets from the borrower can also be called upon to pay such sum of money as may be sufficient to pay the secured debt. Section 14 (1) lays down that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor, then he may, for the purpose of taking possession or control of any such secured asset make an application in writing to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto is situated or is found for taking possession thereof. On receipt of such request, the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall take possession of the asset or document and forward the same to the secured creditor. Sub-section (2) of Section 14 empowers the Chief Metropolitan Magistrate or the District Magistrate to take appropriate steps or use, or cause to be used, such force, as may be necessary for taking possession of secured assets and documents relating thereto. Sub-section (3) of Section 14 declares that any action taken by the Chief Metropolitan Magistrate or the District Magistrate under Section 14 shall not be called in question by any court or before any authority. Section 17 which is captioned as “Right to appeal” lays down that any person (including the borrower) aggrieved by any of the measures taken under sub-section (4) of Section 13 by the secured creditor or his authorized officer can make an application to the Debts Recovery Tribunal within forty five days from the date of taking of such measures. Under sub-section (2) of Section 17 the Debts Recovery Tribunal is required to consider whether any of the measures taken by the secured creditor under sub-section (4) of Section 13 for enforcement of security is in accordance with the provisions of the Act and Rules made there under. If the Tribunal comes to the conclusion that such measure is not in accordance with the provisions of the Securitisation Act and the Rules, then it may require restoration of management of business to the borrower or restoration of possession of the secured assets and declare that the action taken by the secured creditor is invalid.

The Tribunal can pass any other appropriate order in regard to the steps taken by the secured creditor under Section 13 (4). If the Tribunal declares that the action taken by the secured creditor is in consonance with sub-section (4) of Section 13 then such creditor can take recourse to one or more of the modes mentioned in Section 13 for the purpose of recovery of secured debts.

A conjoint reading of Section 13 (4) and 14 makes it clear that the source of power to take possession of the secured assets of the borrower can be traced in Section 13 (4) and not under Section 14, which has been enacted as an aid for execution of the decision taken by the secured creditors to take possession of the secured assets or documents. To put it differently the substantive provision entitling the secured creditor to take possession of the secured assets is contained in Section 13 (4) and Section 14 merely contains a provision to facilitate taking over of possession without any impediment. If a person feels aggrieved by the action of the secured creditor to take possession of the secured asset, then he can file an application under Section 17 (1) before the Tribunal and the Tribunal can, after examining the facts and circumstances of the case and evidence produced by the parties declare that the action taken by the secured creditor is not inconsonance with Section 13 (4). The Tribunal can also direct the secured creditor to restore the possession of the secured assets of the borrower.

In view of the above analysis of the relevant provisions, we are inclined to agree with Shri Mohan Parasaran that right of appeal/representation available to the aggrieved person under Section 17 can be exercised as and when the secured creditor decides to take possession of the property. He can also challenge order passed by the Chief Judicial Magistrate or the District Magistrate, as the case may be, under section 14 of the Securitisation Act.

If Section 14 is read in the manner indicated above, it is not possible to accept the argument of the learned counsel for the petitioners that the same is violative of Article 14 of the Constitution.

In **Mardia Chemicals Ltd v. Union of India** (supra), the Supreme Court upheld the constitutionality of the Securitization Act but struck down Section 17 to the extent it provided for deposit of 75% of the disputed demand as a condition precedent to the entertaining of appeal. Their Lordships observed that the remedy available under section 17 is not in the nature of appeal but is akin to civil suit.

Paragraphs 59 to 62 of that judgment which have bearing on these petitions, read as under:

> " 59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in *Ganga Bai* v. *Vijay Kumar*[18] where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15)
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> "There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."
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> **60.** The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. The amount of deposit of 75% of the demand, at the initial proceeding itself sounds unreasonable and oppressive, more particularly when the secured assets/the management thereof along with the right to transfer such interest has been taken over by the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on the basis of a one-sided claim alone, cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the inherent infirmity leaning one-sidedly in favour of the party, who, so far has alone been the party to decide the amount and the fact of default and classifying the dues as NPAs without participation/association of the borrower in the process. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the authority concerned. Placed in a

situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, renders the remedy illusory and nugatory.

61. In the case of *Seth Nand Lal*[15] while considering the question of validity of pre-deposit before availing the right of appeal the Court held: (SCC p. 590, para 22)

[R]ight of appeal is a creature of the statute and while granting the right the legislature can impose conditions for the exercise of such right *so long as the conditions are not so onerous as to amount to unreasonable restrictions* rendering the right almost illusory. (emphasis supplied)

While making the said observation this Court referred to the decision in the case of *Anant Mills Co. Ltd.*[14] In both the abovenoted decisions this Court had negated the plea raised against pre-deposit but in the case of *Seth Nand Lal*[15] it was found that the condition was not so onerous since the amount sought to be deposited was meagre and that too was confined to the landholding tax payable in respect of the disputed area i.e. *the area or part thereof which is declared surplus by the prescribed authority* (emphasis supplied) after leaving the permissible area to the appellant. In the above circumstances it was found that even in the absence of a provision conferring discretion on the Appellate Authority to waive or reduce the amount of pre-deposit, it was considered to be valid, for the two reasons indicated above. The facts of the case in hand are just otherwise.

62. As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the court of the first instance under the Code of Civil Procedure. No doubt, in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act."

In view of the above discussion, we hold that Section 14 of the Securitisation Act does not suffer from any constitutional infirmity. We further hold that the orders passed by the Chief Metropolitan Magistrate, Cyberabad and Collector and District Magistrate, Nellore for appointment of Advocate-Commissioner and the Mandal Revenue Officer cannot be quashed on the ground that the same have been passed

without complying with the rules of natural justice.

In the result, the writ petitions are dismissed. However, it is made clear that the petitioners shall be free to avail remedy under Section 17 of the Secruitisation Act.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

February 17, 2001.

MSV/GRR/vtv